

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MAEGAN OLIVIA HALL,)	
)	
Plaintiff,)	
)	Case No. 3:23-cv-00173
v.)	
)	Judge Eli J. Richardson
CITY OF LAVERGNE, TENNESSEE,)	Magistrate Judge Barbara D. Holmes
BURREL “CHIP” DAVIS, LEWIS)	
POWELL, and HENRY “TY”)	
MCGOWAN,)	
)	
Defendants.)	

ORDER DENYING MOTION FOR ENTRY OF DEFAULT

Pending is Plaintiff’s Motion for Entry of Default against Defendant Burrel “Chip” Davis pursuant to Federal Rule of Civil Procedure 55(a). (Doc. No. 18). For the following reasons, the Motion is **DENIED**.

Plaintiff filed this action on February 27, 2023. (Doc. No. 1). On March 30, 2023, Plaintiff returned the Summons and Proof of Service declaration stating that Mr. Davis was personally served process on March 2, 2023. (Doc. No. 17). On March 31, 2023, Plaintiff filed the pending Motion for Entry of Default. (Doc. No. 18). On April 3, 2023, counsel for Mr. Davis filed an Answer to Plaintiff’s Complaint. (Doc. No. 20).

When evaluating whether to enter default pursuant to Federal Rule of Civil Procedure 55(a), the Clerk must ascertain not only whether a party has filed a responsive pleading or motion, but also whether the defendant has taken any action to “otherwise defend.” “The words ‘otherwise defend’ presume the absence of some affirmative action on the part of a defendant which would

operate as a bar to the satisfaction of the moving party's claim.” *Wickstrom v. Ebert*, 101 F.R.D. 26, 32 (E.D. Wis. 1984). “Where a defendant appears and indicates a desire to contest an action, a court may exercise its discretion to refuse to enter default There is a strong public policy, supported by concepts of fundamental fairness, in favor of trial on the merits.” *Higgins v. Dankiw*, No. 8:08CV15, 2008 WL 2565110, at *2 (D. Neb. June 24, 2008) (internal citations omitted). By filing an Answer to Plaintiff’s Complaint, Mr. Davis has clearly expressed his intent to defend this action. Accordingly, Plaintiff’s Motion for Entry of Default (Doc. No. 18) is **DENIED**.

s/ Lynda M. Hill
Lynda M. Hill
Clerk of Court